

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Daine Anton Crawley,

Plaintiff

v.

Brandon Wolden,

Defendant

Case No.: 2:19-cv-02179-CDS-BNW

**Order Adopting Magistrate Judge's Report
and Recommendation, Denying Motion to
Amend the Complaint, and Granting
Motion to Strike**

[ECF Nos. 66, 91, 92, 100]

This is a 42 U.S.C. § 1983 civil rights action brought by *pro se* plaintiff Daine Crawley. There are several pending motions before the court, including a motion to amend the complaint (ECF No. 66), competing motions for summary judgment (ECF Nos. 80 and 83),¹ and a motion to strike plaintiff's sur-reply to defendant's motion for summary judgment (ECF No. 92). This order resolves the R&R, the motion to amend the complaint, and the motion to strike.

I. I adopt the recommendation of the magistrate judge and deny plaintiff's motion to amend the complaint.

On January 10, 2023, United States Magistrate Judge Brenda Weksler issued a report and recommendation (ECF No. 100) recommending that I deny plaintiff's motion to amend the complaint (ECF No. 66). Under the local rules, plaintiff had until January 10, 2023, to file any objections to the R&R. ECF No. 100 at 4. As of the date of this order, plaintiff has failed to file objections to the R&R. "[N]o review is required of a magistrate judge's report and recommendation unless objections are filed." *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Because no objection has been filed, I adopt Judge Weksler's R&R in its entirety and deny plaintiff's motion to amend.

¹ The court is working to resolve the motions for summary judgment as soon as possible. A separate order will issue.

1 **II. Defendant's motion to strike (ECF No. 92) is granted.**

2 On November 21, 2022, plaintiff filed a surreply to defendant's motion for summary
3 judgment without leave of the court. ECF No. 91. Defendant filed a motion to strike the surreply,
4 arguing that the filing does not comply with the local rules and makes inaccurate or incorrect
5 claims. *See generally* ECF No. 92.

6 A surreply is an additional reply brief filed by the non-moving party after the underlying
7 motion has already been fully briefed. *Hammler v. Lyons*, 2023 WL 113764, at *1 (E.D. Cal. Jan. 5,
8 2023) (citations omitted). The Federal Rules of Civil Procedure do not expressly permit the
9 filing of a surreply, and this district's local rules do not permit surreplies without first obtaining
10 the court's leave. Instead, Local Rule 7-2(b) allows only for a motion, a response, and a reply. LR
11 7-2(b). That same rule explicitly states that "[s]urreplies are not permitted without leave of
12 court; motions for leave to file a surreply are discouraged." *Id.* (emphasis added).

13 Because surreplies are discouraged, "[o]nly the most exceptional or extraordinary circumstances
14 warrant permitting a surreply to be filed." *Stevens v. Prentice*, 2018 WL 3758577, at *1 (D. Nev. Aug.
15 8, 2018) (citation omitted).

16 I do not find any exceptional or extraordinary circumstances here that would warrant
17 the filing of a surreply. However, I will not consider issues or arguments a party raises for the
18 first time in a reply brief. *Fifty-Six Hope Road Music, Ltd. v. Mayah Collections, Inc.*, 2006 WL 1687451,
19 *2 (D. Nev. 2006). Courts must not consider new evidence filed in a reply brief without giving
20 the non-moving party an opportunity to respond. *Am. Civil Liberties Union of Nev. v. City of Las Vegas*,
21 13 F. Supp. 2d 1064, 1071 (D. Nev. 1998). Accordingly, defendant's motion to strike the surreply
22 (ECF No. 92) is granted. The court will not consider the surreply, nor the substantive responses
23 contained in defendant's motion to strike.

1 **III. Conclusion**

2 IT IS THEREFORE ORDERED that Magistrate Judge Weksler's Report and
3 Recommendation [ECF No. 100] is ADOPTED in its entirety.

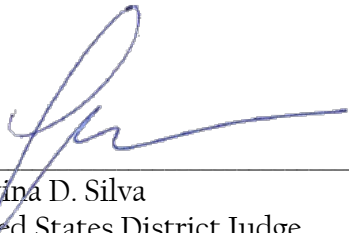
4 IT IS FURTHER ORDERED that the plaintiff's motion to amend the complaint [ECF
5 No. 66] is DENIED.

6 IT IS FURTHER ORDERED that defendant's motion to strike plaintiff's surreply [ECF
7 No. 92] is GRANTED.

8 The Clerk of Court is directed to STRIKE plaintiff's surreply [ECF No. 91] from the
9 docket.

10 DATED: January 20, 2023

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



Cristina D. Silva
United States District Judge